



Nonprofit Executive Breakfast Seminar

City Club of Washington

October 4, 2007

Welcome



- Sponsors
 - Argy, Wiltse & Robinson, P.C.
 - Alliance Bank of Virginia
 - Drohan Management Group
- Presenters
 - Jeff Schragg, Partner - Argy, Wiltse & Robinson, P.C.
 - Jonathan L. Pompan, Esq - Venable, LLP
 - Dennis Conley - Managing Partner, Transition Partners
 - Doug Haskett II - Sr. Vice President, Alliance Bank

Seminar Agenda

- 8:00 am Welcome
- 8:15 am Current Developments
 - IRS Revision of Form 990
 - SOX: Information Technology Compliance
 - Electronic Filing Notices
 - Executive Compensation
 - Political and Lobbying Activity
 - Deferred Compensation Rules
- 9:00 am Questions for Panelists
- 9:30 am Adjourn

IRS Revision of Form 990

Problems with the Current 990

- Illogical sequence and format
- Comparability among similar organizations is difficult
- Difficult to insert new questions
- Attachments create inconsistencies
- Fails to provide a complete picture of the organization
- Identity crisis: A tax return or a public information document?
- Use by state charity officials for state compliance

IRS Revision of Form 990

IRS Redesign Timing

- Draft released June 14, 2007
- Comments accepted through September 14, 2007
- Redesign efforts completed by December 31, 2007
- For use by filers for year ending on or after December 31, 2008 (initial due date of May 15, 2009)
- Timeline is being driven by IRS budget constraints

IRS Revision of Form 990

Guiding Principles

- Enhance transparency
- Promote compliance
- Minimize filing burden

IRS Revision of Form 990

Old Form 990

- 9 pages
- 2 Schedules
- Up to 36 Attachments
- Only 501(c)(3) organizations required to report highly compensated employees and independent contractors
- Report compensation based on calendar year or fiscal year
- \$25,000 filing threshold

New Form 990

- 10 pages
- 15 Schedules
- No Attachments
- All organizations required to report highly compensated employees and independent contractors
- Report compensation based on Form W-2 or Form 1099
- TBD filing threshold

IRS Revision of Form 990

New Recordkeeping Burdens

- Disclose city and state of *residence* of board members
- Determine independence of board members
- Disclose use of rebuttable presumption of reasonableness for CEO, CFO, Executive Director, and Treasurer
- Greater level of detail required for highly individuals
 - Report payment for first class travel, club dues, use of personal residence
 - Disclose compensation based on net earnings of organization or any related organization
 - Report existence of a written reimbursement policy

IRS Revision of Form 990

New Recordkeeping Burdens

- Governance Questions
 - Disclose number of transactions reviewed under conflict of interest policy
 - Confirm existence of written whistleblower and document retention policies
 - Existence of an audit committee
 - Use of an independent accountant
 - Review of tax return by board of directors
 - Method of public disclosure for tax returns, financial statements, etc.

IRS Revision of Form 990

New Recordkeeping Burdens

- Disclose investment income from tax exempt bond proceeds, private use, and third party compensation
- Separate domestic and foreign grants
- Independent contractor expenses for lobbying services and monthly portfolio management service fees.
- Expenses for advertising, information technology, royalties, and travel and entertainment for government officials
- Separate program related from income producing investments
- Disclose conservation easements, museum collections, escrow accounts, and endowment funds

IRS Revision of Form 990

New Recordkeeping Burdens

- All 501(c) organizations must report detailed lobbying activity
- Report uncertain tax positions (FIN 48 footnote)
- Additional details regarding special fundraising events
- Community Benefit Report, billings and collections practices, and Emergency Room policies for hospitals
- Disclose filing of Forms 1098-C, 8282 and 8283 regarding noncash charitable contributions

IRS Revision of Form 990

Informal IRS Responses to Public Comments

- All ratios being deleted from Page 1, replaced by comparison with prior year activity
- Removal of expense reimbursements and de minimus fringes disclosures
- Schedules for Foreign Activities, Hospitals, and Tax Exempt Bonds may be implemented at a later date
- Will consider allowing the attachment of explanations

Importance

- Increased dependencies on information systems
- Increasing vulnerabilities and threats
- Scale and cost of IT environment and future IT investments
- Maximize business and competitive advantages

Most organizations recognize the potential *benefits* that technology can yield, but successful companies understand and manage the *risks* associated with implementing new technologies.

Responsibilities

- **Understanding the organization's internal control program and its financial reporting process**
- **Mapping the IT systems that support internal control and the financial reporting process to the financial statements**
- **Identifying the risks related to the aforementioned systems**
- **Designing and implementing controls to mitigate the identified risks and monitor them on an ongoing basis to ensure their effectiveness**
- **Documentation and testing of IT controls**
- **Ensuring IT controls are updated and changed as necessary to reflect changes in internal controls or financial report processes**
- **Monitor IT controls for effective operation over time**
- **Actively support and participate in the corporate/company Sarbanes-Oxley project management office**

Action

- Follow the conventions set out by the IT Governance Institute using the Control Objectives for Information and related Technology (COBIT) framework (see www.itgi.org)
- Review PCAOB Auditing Standard Number 5 (see http://www.pcaobus.org/Rules/Docket_021/2007-05-24_Release_No_2007-005.pdf)
- Leverage current work you are doing

Electronic Filing Notices

Form 990-N, e-Postcard

- Gross receipts normally \$25,000 or less
- Revocation for failure to file for three consecutive years
- Exceptions to this requirement:
 - Churches
 - Organizations included in a group return
 - 509(a)(3) supporting organizations must file 990 or 990-EZ
 - Private foundations must file 990-PF

Executive Compensation

Rebuttable Presumption of Reasonableness

- Reviewed and approved by an independent board
- Comparability data
- Adequate contemporaneous documentation
- “First-bite” exception for 501(c)(3) and 501(c)(4) entities

Political and Lobbying Activity

Important Considerations

- What is political activity?
- What is lobbying?
- What is my organization permitted to do?
- How much is too much?
- Should my organization make a 501(h) election?

Lobbying and Associations

- **501(c)(6) Organizations** - Neither federal tax law nor the IRS has put any limits on how much a 501(c)(6) can spend on lobbying. In fact, depending on its purposes, in certain cases, all of a 501(c)(6)'s revenues could be spent on lobbying.

- Lobbying by 501(c)(3) organizations, as long as such lobbying does not constitute a "substantial part" of an organization's total activities. The 1976 lobbying law and its implementing regulations issued by the Internal Revenue Service ("IRS") guide 501(c)(3) organizations that want to lobby.
 - The law and regulations define "lobbying" and the limits on total lobbying expenditures. To be covered under the 1976 law, a 501(c)(3) organization must make an affirmative election (called a "501(h) election," after the applicable section of the tax code). An organization that does not make the 501(h) election is still allowed to lobby, but it cannot take advantage of the objective definitions and limits that are part of that law; rather, such an organization will be governed by the vague "substantial part" test.
- Organizations that make the 501(h) election will recognize that federal tax law and regulations provide wide latitude for 501(c)(3) groups to lobby.

Summary Chart

ACTIVITY	501(c)(3)	501(c)(6)
<i>Lobbying</i>	<i>Yes, and can advocate for or against specific legislation</i>	<i>Yes</i>
<i>Expenditure limits</i>	<i>Yes, with a sliding scale if organization elects 501(h)</i>	<i>None, but membership dues are not deductible based on amount of lobbying</i>
<i>Federal lobbying disclosure</i>	<i>Yes, if threshold met</i>	<i>Yes, if threshold met</i>
<i>Legislator scorecards / voting records</i>	<i>Yes, with limitations</i>	<i>Yes</i>
<i>Political Action Committees</i>	<i>Prohibited</i>	<i>Yes</i>
<i>Endorsing candidates</i>	<i>Prohibited</i>	<i>Yes</i>
<i>Contributions to candidates</i>	<i>None</i>	<i>None to federal candidates, but is permissible in certain states</i>
<i>Voter registration drives and education</i>	<i>Yes, but must be nonpartisan and focused on need to vote</i>	<i>Yes and may be partisan</i>

The Honest Leadership and Open Government Act: New Lobbying & Ethics Rules - Changes to the Law:

- Lobbying Disclosure
- Gift & Travel Rules
- Federal Election Campaign Act
- Post-Government Employment
- Legislative Procedure

- Internal Revenue Code Section 409A dramatically changed the landscape for deferred compensation arrangements. Recently issued final IRS rules require that any arrangement that is now treated as deferred compensation be brought into compliance by December 31, 2007. If it is not, the affected *individuals* (not the employers) face draconian tax penalties.



Questions for Panelists

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